

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Revision of the Commission's Rules)	
To Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	CC Docket No. 94-102
)	
NOW Licenses, LLC Request for Temporary)	
Waiver of Section 20.18(c) of the Commission's)	
Rules)	

ORDER

Adopted: June 10, 2004

Released: June 10, 2004

By the Deputy Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition for temporary waiver filed by NOW Licenses, LLC ("NOW")¹ to extend the time for compliance with the Commission's Text Telephone Devices (TTY) rule for the system that it is being acquired by Dobson Cellular Systems, Inc. (Dobson) to June 30, 2004 or upon consummation of their transaction.² Based upon our review of the information before us, we believe that the totality of the circumstances presented warrant this extension of the compliance deadline. We further find that the public interest will be served by granting such extension to NOW.

II. BACKGROUND

2. Under the Commission's TTY rule, commercial mobile radio service (CMRS) carriers "must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of Text Telephone Devices."³ The rule requires compliance as of June 30, 2002. On June 28, 2002, however, the Wireless Telecommunications Bureau ("Bureau") granted to certain licensees an extension of the June 30, 2002 deadline.⁴ The Bureau allowed extensions of up to a year (*i.e.*, June 30, 2003) for smaller carriers who described vendor delays beyond their control, explicitly recognizing that smaller, predominately rural carriers were the last to be accommodated by vendors. The Bureau also allowed carriers who chose to overbuild their obsolescent TDMA networks an additional six months to come into compliance, until December 31, 2003.

¹ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, NOW Licenses, LLC Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules, filed June 25, 2002 (*NOW's Initial Waiver Request*).

² 47 C.F.R. § 20.18(c).

³ *Id.*

⁴ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Order, 17 FCC Rcd 12084 (WT Bur. 2002) (*June 28 Order*).

3. On June 25, 2002, NOW submitted a request for temporary waiver from the requirements of section 20.18(c).⁵ In that request, NOW outlined the technical difficulties it was facing in meeting the Commission's compliance deadline. NOW explained that it needed additional time to upgrade its network with a newer GSM air interface in order to achieve compliance.⁶ Subsequently, NOW entered into negotiations for Dobson's acquisition of NOW's licenses. On December 23, 2003, NOW and Dobson filed an application for assignment of the authorizations held by NOW Licenses, LLC.⁷

4. On that same date, NOW filed a supplement to its *Initial Waiver Request* seeking an extension of seven months from the date of consummation or denial by the Commission of the assignment application.⁸ NOW noted in that filing that Dobson was not purchasing the NOW switches, rather it would install new switches with TTY capability.⁹ Therefore, Dobson would need additional time to make the necessary upgrades to the NOW system, or alternatively NOW would need the additional time should the Commission deny the assignment application. The FCC consented to the proposed NOW/Dobson assignment on April 30, 2004.

5. On May 14, 2004, NOW filed a further supplement to its request to reflect the approval of its sale to Dobson.¹⁰ In its revised filing, NOW is seeking a waiver to extend its date for TTY compliance to June 30, 2004 or upon consummation of the transaction with Dobson, whichever occurs earlier.¹¹ In that filing, NOW explains that given its dire financial circumstances and the fact that its system is being acquired by a company that plans to install new switches, which will comply with the TTY rule, an extension should be granted. On May 18, 2004, Dobson filed a petition for extension of the TTY compliance deadline to December 31, 2004 to enable upgrades of the NOW system it is acquiring.

6. *Waiver Standard.* The Commission may, on its own motion, waive its rules when good cause is demonstrated.¹² The Commission may exercise its discretion to waive a rule where unique or unusual factual circumstances make strict compliance inconsistent with the public interest.¹³ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.¹⁵ Waiver of the Commission's rules are therefore appropriate only if unique circumstances warrant a deviation from the general rule,¹⁶ and such a

⁵ See NOW's *Initial Waiver Request*.

⁶ *Id.*

⁷ See ULS File No. 0001555982.

⁸ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Supplement to Request of NOW Licenses, LLC for a Temporary Waiver of Section 20.18(c) of the Commission's Rules, filed December 23, 2003 (*NOW's December 2003 Supplement*).

⁹ *NOW's December 2003 Supplement* at 3.

¹⁰ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Further Supplement to Request of NOW Licenses, LLC for a Temporary Waiver of Section 20.18(c) of the Commission's Rules, filed December 23, 2003 (*NOW's May 2004 Supplement*).

¹¹ *Id.*

¹² 47 C.F.R. §§ 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

¹⁴ 47 C.F.R. § 1.925. See also *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *WAIT Radio*, 418 F.2d at 1157.

¹⁶ 47 C.F.R. § 1.925.

deviation will serve the public interest.¹⁷

III. DISCUSSION

7. We find that NOW has demonstrated that good cause exists to grant its request for waiver of the TTY implementation deadline. Specifically, we find that NOW has provided substantial, credible evidence of unique circumstances that warrant an extension of time to comply with the TTY requirements. We also find that NOW has demonstrated that granting their request for waiver would serve the public interest. Accordingly, we grant NOW's requests for waiver and extend the compliance deadline for TTY capability to June 30, 2004 or upon consummation of their transaction with Dobson, whichever occurs sooner.

8. *Unique Circumstances.* We are persuaded that NOW acted in good faith in its efforts to comply with the Commission's TTY rule. We are mindful that it, like other smaller carriers, experienced vendor delay in providing upgrades needed to achieve compliance with our TTY requirements.¹⁸ In its *December 2003 Supplement*, NOW explains, in detail, the projected burden associated with upgrading its system due to its need to conduct a "far more substantial upgrade" than its vendor, Nortel, had originally anticipated.¹⁹ In the *June 28 Order*, the Wireless Telecommunications Bureau (Bureau) granted additional time to many small carriers because of vendor delay in providing software upgrades.²⁰ NOW had not filed its request in time to be included in that Order, but it is clear from its filings that an extension is warranted for the same reasons underlying the relief granted by the Bureau to those carriers addressed in the *June 28 Order*.

9. Moreover, we are persuaded by NOW's showing of exceptional financial problems. We find that NOW's financial condition is dire and has been for an extended period of time, and this severely restricts its ability to purchase needed upgrades.²¹ Specifically, we note the Independent Auditors Report that states that NOW is not in compliance with certain loan covenants and is in default on its master lease obligations.²² As that report concludes, NOW is continuing to operate only because of its pending sale to Dobson.²³ Based on the information before us, it appears that absent that sale, NOW would no longer be capable of operating, or not for as lengthy period of time.

10. Additionally, NOW's assets are being sold to Dobson. As noted above, the filing seeking assignment of its licenses was filed at the Commission on December 23, 2003. As NOW states in its *December 2003 Supplement*, the anticipated cost of upgrading its switches is over \$1,000,000.²⁴ After their transaction closes, however, Dobson intends to put all new switches in the NOW service area, which would make any upgrading of the NOW switches irrelevant on a going-forward basis.

11. Based on the totality of these circumstances, we find that special circumstances exist that warrant granting the extension as requested by NOW. In particular, given the initial showing by NOW that it would have met the showing necessary to be granted an extension under the *June 28 Order*, the evidence of severe financial hardship, and the pending sale of NOW to Dobson, we grant the extension as

¹⁷ *Id.* at 1159.

¹⁸ See NOW's *Initial Waiver Request* at 2-3; see also NOW's *December 2003 Supplement* at 3.

¹⁹ See NOW's *December 2003 Supplement* at 3.

²⁰ See *June 28 Order*, 17 FCC Rcd 12084.

²¹ See NOW's *May Supplement* at 2.

²² *Id.*

²³ *Id.*

²⁴ See NOW's *December 2003 Supplement* at 3.

requested.

12. *Public Interest.* We conclude also that NOW has shown that granting their requests for waiver would serve the public interest. The Commission's TTY requirements are an important tool for bringing access to 911 services to all consumers. Accordingly, it is in the public interest that carriers implement TTY capabilities as quickly as possible. NOW had put forward a plan to achieve compliance. Due to reasons cited above, that plan faltered. Granting NOW's waiver requests, however, will allow Dobson to make TTY capability available to consumers in the markets served by NOW in the not to distant future.²⁵ As NOW indicates in its *May 2004 Supplement*, but for the impending consummation of the Dobson transaction, NOW's customers would remain without TTY-capable 911 service for the foreseeable future. By allowing Dobson time to upgrade the system it is acquiring from NOW, the public interest will be served because Dobson will bring greater access to these consumers in a fairly expeditious fashion.

13. For the reasons stated above, and given the special circumstances presented here, we find it reasonable to grant the relief as requested by NOW. NOW is granted an extension for compliance with the Commission's TTY rules until June 30, 2004 or until such time as it consummates the transaction with Dobson, whichever is sooner.

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to sections 0.131, 0.331, 1.3, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.3, 1.925 the petition filed by NOW Licenses, LLC is GRANTED.

15. IT IS FURTHER ORDERED that NOW Licenses, LLC will have until June 30, 2004 or until such time as it consummates the transaction with Dobson, whichever is sooner, to come into compliance with the Commission's TTY rule, 47 CFR § 20.18(c).

FEDERAL COMMUNICATIONS COMMISSION

Michael Wilhelm
Deputy Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

²⁵ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Dobson Cellular Systems, Inc. Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules, CC Docket No. 94-102, Order, DA 04-1696 (rel. June 10, 2004).